Michigan Family Resources, Inc. v. Service Employees International Union Local 517M[*]

I. INTRODUCTION

At first blush, employers won a victory in *Michigan Family Resources v. Service Employees International Union Local 517M*, a decision by the United States Court of Appeals for the Sixth Circuit upholding a district court decision to vacate an arbitration award in favor of union-member employees. However, examining the court's conflict in granting the decision suggests that this victory may be short–lived.

II. FACTS AND PROCEDURAL HISTORY

The plaintiff state agency, Michigan Family Resources (MFR), runs the federal Headstart Program for Kent County, located in western Michigan. Some of MFR's employees were members of the defendant union, Local 517M of the Service Employees International Union (517M). On behalf of these employee-members, 517M negotiated a collective bargaining agreement (the agreement) with MFR for annual wage increases.

The court focused on four provisions of the agreement. The first provision, Article 35(1), deals with parallel cost of living increases between the employee-members and all other MFR employees[1] pursuant to MFR's funding source.[2] Article 35(2) concerns merit-based increases.[3] It states that:

> During the fall semester of each program year, bargaining unit members [the union employees] will be reviewed and will be considered for a merit increase . . . . MFR will guarantee at least that for each bargaining unit employee the sum of any [cost-of-living increase] paid during the year and the merit increase will be as follows: 2002—4%; 2003—2.5%; 2004—3.5%. For example, if the [cost-of-living] increase for 2004 is 2.5%,

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[*] Mich. Family Res., Inc. v. Serv. Employees Int'l. Union Local 517M, 438 F.3d 653 (6th Cir. 2006).

[1] Specifically, Article 35(1) of the agreement provides: Bargaining unit members will receive the same cost of living increases paid to other MFR employees pursuant to the directive of MFR's funding source. The parties understand that the timing and amount of any such increase is entirely dictated by the funding source. *Id.* at 654.

[2] The "funding source" is the federal government. *Id.*

[3] *Id.* at 654–55.

effective on September 1, 2004 bargaining unit members will receive at least an additional 1.0%.[4]

The third provision, Article 5(c), requires the parties to arbitrate any conflicts that they cannot resolve on their own.[5] This provision lists five potential arbitrators from which to choose. It further states that the chosen arbitrator "shall have full authority to render a decision which shall be final and binding upon both parties and the employees, except that the arbitrator shall not have authority to change, alter, amend, or deviate from the terms of this collective bargaining agreement in any respect."[6] Finally, Article 34 of the agreement declares that it expresses the intent and understanding of the parties; past practices have no effect on the parties, and any changes must be made in writing.[7]

In 2003, MFR notified the union employees that they would receive a 2.5% increase for the year—1.5% from the funding source (the federal government) and 1% from MFR—while non-union employees would receive a 4% increase for the year. This pay increase satisfied the collective bargaining agreement's minimum requirement of 2.5% for that year. However, 517M asserted that the agreement required parity in cost-of-living increases between union and non-union employees. As a result, 517M filed a grievance against MFR, and in accordance with the agreement, engaged an arbitrator to resolve the dispute.

The arbitrator wrote a decision in favor of the union. In the arbitrator's opinion, the point at issue was whether Article 35 (which concerns the cost-of-living and merit increases) "requires MFR to provide parity in [cost-of-living] payments for its [union] employees when non-Union employees receive higher payments."[8] The arbitrator felt that Article 35 was not clear on this point—it required payments from the funding source to be equal between union and non-union employees, but it did not address cost-of-living increases from other sources, such as MFR.[9] The arbitrator then noted that before and after adopting the collective bargaining agreement, MFR granted

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[4] *Id.*

[5] *See id.* at 655.

[6] *Id.* (quoting Article 5(c) of the agreement).

[7] Specifically, the agreement "expresses the understanding of the parties and it will not be changed modified, or varied, except by written instrument signed by duly authorized agents of the party hereto," and that "there are no past practices which are binding upon the parties." *Mich. Family Res.*, 438 F.3d at 655.

[8] *Id.*

[9] *See id.*

the same cost-of-living increase to all employees, irrespective of union affiliation.[10] MFR never held merit reviews, and in a 2002 memo it characterized the entire wage increase to union-employees in terms of cost-of-living.[11] Most importantly for the appellate court's decision, the arbitrator concluded that Article 35 "*becomes* ambiguous because of the Employer's prior decision to characterize both its individual payment and its payment from the federal funding source as [cost-of-living]."[12] The arbitrator then resolved this supposed ambiguity in light of MFR's past practice of granting identical cost-of-living increases to all employees and therefore awarded an equivalent 4% cost-of-living increase to the 517M union members.[13]

In 2004, MFR filed a complaint in federal court seeking to vacate the award.[14] The district court granted MFR's motion for summary judgment and held that "the Arbitrator's award does not draw its essence from the [agreement] because the Arbitrator considered evidence to aid in construing the [agreement] when, in fact, no construction was necessary."[15] The court concluded that the arbitrator went beyond the express terms of the agreement, imposed additional terms on the parties, and considered past practices even though such considerations were specifically proscribed by the agreement.[16] 517M appealed the decision.

III. THE COURT'S HOLDING AND REASONING

Although the Sixth Circuit upheld the district court's decision to vacate the arbitration award, it did so with great discomfort. The standard for reviewing arbitration awards is "one of the narrowest standards of judicial review," and awards should not be overturned easily.[17] The standard set forth by the U.S. Supreme Court commands that when an award "draws its essence from the collective bargaining agreement," it will be upheld; when it does

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[10] *See id.*

[11] *See id.*

[12] *Id.* (emphasis added).

[13] *Mich. Family Res.*, 438 F.3d at 655.

[14] *See id.* at 656. MFR premised subject-matter jurisdiction on section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1994).

[15] *Mich. Family Res.*, 438 F.3d at 656.

[16] *Id.*

[17] *Id.* (quoting Tenn. Valley Auth. v. Tenn. Valley Trades & Labor Council, 184 F.3d 510, 514–14 (6th Cir. 1999)).

not, a court can vacate it.[18] In the present case, the Sixth Circuit applied a four-part test to determine whether an award draws its essence from the collective bargaining agreement. If any of the following are true, then an award does not draw its essence from the agreement:

> (1) It conflicts with express terms of the agreement; (2) it imposes additional requirements not expressly provided for in the agreement; (3) it is not rationally supported by or derived from the agreement; or (4) it is based on general considerations of fairness and equity instead of the exact terms of the agreement.[19]

Applying this four-part test to the arbitration award, the Sixth Circuit affirmed that it did not draw its essence from the agreement.[20] The agreement addressed the requirements for government-funded cost-of-living increases but never discussed employer-funded cost-of-living increases.[21] Furthermore, the court noted that the agreement discussed merit increases, but never required parity between union and non-union employees.[22] Accordingly, the agreement admitted but one proper interpretation: that the parties reached an agreement on minimum amounts owed to union employees, but the agreement never required parity in the sum of the cost-of-living and merit increases.[23] Thus, when the arbitrator required as part of the award that any cost-of-living increase provided to non-union employees must be given to union employees, he imposed an "additional requirement not expressly provided for in the agreement,"[24] one that "conflicted with express terms of the agreement."[25] Accordingly, the award did not draw its essence from the agreement.

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[18] *Id.* at 656 (quoting United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36 (1987)).

[19] *Mich. Family Res.*, 438 F.3d at 656 (quoting Sterling China Co. v. Glass Workers Local No. 24, 357 F.3d 546, 556 (6th Cir. 2004)).

[20] *Id.* at 654.

[21] *Id.* at 656.

[22] *Id.*

[23] *Id.* at 657.

[24] *Id.* (citing part (1) of the four-part-test).

[25] *Mich. Family Res.*, 438 F.3d at 657 (citing part (2) of the four-part-test).

A. *Sutton's Concurrence*

The significance of *Michigan Family Resources* lies in Judge Sutton's concurring opinion which exposes the potential inconsistency between the Supreme Court precedent and the Sixth Circuit's four-part interpretation. Just five years ago, the Supreme Court held that so long as "an arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, the fact that a court is convinced he committed serious error does not suffice to overturn his decision."[26] The rationale for such strong deference is to respect the bargain for which the parties contracted—namely the arbitrator's construction and the ability to stay out of court to settle disputes.[27]

While Sutton staunchly agrees with the court that the arbitrator committed a serious error in construing the contract, "that of course is not the point."[28] Rather, what concerns Sutton is the fact that this opinion is in line with the Sixth Circuit's four-part standard yet also appears to conflict with the Supreme Court's near-absolute deference to arbitration decisions.[29] In fact, this case is one part of a significant trend of overturning arbitration decisions in the Sixth Circuit. "While the Supreme Court to my knowledge has not vacated a single labor-arbitration award since 1960, my chambers' survey of published Sixth Circuit decisions since 1986 reveals that we have vacated 29% of labor-arbitration awards that we have reviewed on merits-based grounds."[30] While Sutton was compelled to follow the four-part test and concur in the opinion, he nonetheless implies that the Sixth Circuit standard—which results in a high rate of vacated arbitration awards—is not what the Supreme Court had in mind.[31]

IV. THE IMPACT OF *MICHIGAN FAMILY RESOURCES*

It is rare when one, let alone three judges welcome the opportunity to review one of their own decisions. Yet, that is exactly the case in *Michigan Family Resources*: "If appellant is to have success on this front, in short, it

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[26] *Id.* at 658 (quoting Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 509 (2001)).

[27] *Mich. Family Res.*, 438 F.3d at 658 (Sutton, J., concurring).

[28] *Id.*

[29] *Id.*

[30] Furthermore, 25% of unpublished opinions vacate awards on similar grounds. *Id.* at 662.

[31] *Id.* at 663.

will have to be through a petition for rehearing en banc, one that the three of us would be open to consider in this case or in any other case presenting the issue."[32] Appellants, in fact, took the court up on its offer and filed a petition for rehearing en banc. On May 5, 2006, the Sixth Circuit vacated its decision in order to rehear it en banc at a future date.

Although the status of the actual *Michigan Family Resources* decision is in flux, it is clear which direction the Sixth Circuit wants to turn—either overturn the four-part test or somehow corral it back into the Supreme Court's standard of extreme deference to arbitration awards. There is only one subsequent Sixth Circuit decision that cites to the test and also has a judge from the *Michigan Family Resources* decision presiding.[33] The case is *Solvay v. Duramed* which affirmed a $68 million arbitration award to Solvay.[34] *Michigan Family Resources* is given an unassuming reference in a footnote that actually supports the four-part test.[35] Yet, perhaps the decision to uphold Solvay's arbitration award belies the fact that despite only getting a passing glance, *Michigan Family Resources* will not go unnoticed. Although the Sixth Circuit vacated the arbitration award, *Michigan Family Resources* should be understood as a harbinger of future arbitral autonomy.

Gabrielle Collier

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[32] *Id.* at 657 (majority opinion).

[33] *See* Solvay Pharmaceuticals v. Duramed Pharmaceuticals, 442 F.3d 471 (6th Cir. 2006). Judge Gilman is the circuit judge common to both cases.

[34] *See id.* at 485.

[35] *But see Mich. Family Res.*, 438 F.3d at 658–61 (Sutton, J., concurring) (questioning the consistency of the four-part test with Supreme Court precedent).